Office Supreme Court, U.S.
FILED
FEB 10 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-695
IN THE

Supreme Court of the United States

October Term, 1982

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Appellant,

vs.

CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Brief of Amicus Curiae Multistate Tax Commission in Support of Appellant.

WILLIAM D. DEXTER,
General Counsel,
MULTISTATE TAX COMMISSION,
204 Custer Way,
Tumwater, Wash. 98501,
(206) 357-8000,
Counsel for Amicus Curiae.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

Counter Statement of Questions Presented.

Does the Employment Retirement Income Security Act of 1974 (ERISA) on its face or otherwise invalidate a state statute that permits a state to collect delinquent state personal income taxes from an ERISA regulated vacation trust when ERISA permits the federal government to collect delinquent federal taxes from ERISA regulated pension funds?

TABLE OF CONTENTS

	Page
Counter Statement of Questions Presented	i
Introductory Statement	1
Statement of Interest	1
Argument	4
I. The Decision of the Ninth Circuit Should Be Reversed Because the District Court Lacked Subject Matter Jurisdiction	4
II. Congressional Enactment of ERISA Does Not Evidence Explicit or Implicit Intent to Preempt State Sovereignty to Tax as Traditionally Reserved to the States by the Tenth Amendment	4
III. It Is Illogical to Imply That Congress Intended That ERISA Preempts a State Statute That Permits a State to Collect Delinquent State Personal Income Taxes From an ERISA Regulated Vacation Trust Fund When ERISA Permits the Federal Government to Collect Delinquent Federal Taxes From All the Regulated Pension Funds Covered by ERISA	7
Conclusion	8

TABLE OF AUTHORITIES

Cases	Page
Carpenters Pension Trust For Southern California v. Kronschnabel, 632 F.2d 745 (9th Cir. 1980), cert. denied, 453 U.S. 922 (1981)	6
Franchise Tax Board v. Construction Laborers Vacation Trust For Southern California, 679 F.2d 1307 (9th Cir. 1982)	4, 5
Gully v. First National Bank, 299 U.S. 109 (1936)	4
Operating Engineer's Local No. 428 v. Zamborsky, 650 F.2d 196, 199 (9th Cir. 1981)	5
Stone v. Stone, 632 F.2d 740 (9th Cir. 1980)	6
United States Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452 (1978), aff'g 417 F. Supp. 795 (S.D.N.Y. 1976)	2
OTHER AUTHORITIES	
California Revenue and Taxation Code § 18817	5
Employment Retirement Income Security Act of 1974, Sec. 514 (29 U.S.C. § 1144)	6, 7
Employment Retirement Income Security Act of 1974, Sec. 514(c)(2) (29 U.S.C. § 1144(c)(2))	5
Railroad Retirement Act of 1974 (45 U.S.C. § 231M)	6
Social Security Act (42 U.S.C. § 407)	6
Treasury Regulation § 1.401(a)-13	6, 7
Constitution	
United States Constitution, Tenth Amendment	3, 4, 7, 8

No. 82-695

IN THE

Supreme Court of the United States

October Term, 1982

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Appellant,

vs.

CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA, *et al.*,
Appellees.

Brief of Amicus Curiae Multistate Tax Commission in Support of Appellant.

INTRODUCTORY STATEMENT.

This brief is submitted by the Multistate Tax Commission in support of the Appellant. Both parties to this proceeding have consented to the filing of this brief.[1]

STATEMENT OF INTEREST.

The Multistate Tax Commission (hereinafter referred to as the MTC) is the official administrative agency of the Multistate Tax Compact (hereinafter referred to as the Compact) currently entered into by nineteen states, including

[1] Consent letters have been filed with the Clerk of the Court.

California and the District of Columbia as full members, and by eleven states as associate members.[1]

The purposes of the Compact are to:

1. Facilitate proper determination of state and local tax liability of the multistate taxpayers, including the equitable apportionment of tax bases and the settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicate taxation.[2]

In the fulfillment of these objectives the MTC is vitally concerned with the ability of the states to administer their taxes in a reasonable and even-handed manner within the framework of our federal system. The MTC believes that this objective has been frustrated by the Ninth Circuit's decision below. The circuit court construed a federal statute to prohibit states from levying upon ERISA vacation trust funds even though no federal legislation requires this result and even though the same prohibition is not imposed upon the federal government.

---

[1]The current regular members are the states of Alaska, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Michigan, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Washington and West Virginia. The associate members are the states of Alabama, Arizona, Georgia, Louisiana, Maryland, Massachusetts, Minnesota, New Jersey, Ohio, Pennsylvania and Tennessee.

[2]The constitutionality of the Compact was upheld by the United States Supreme Court in *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452 (1978), *aff'g* 417 F. Supp. 795 (S.D.N.Y. 1976). The Court there noted that the Compact "symbolized the recognition that, as applied to multistate businesses, traditional state tax administration was inefficient and costly to both State and taxpayer." 434 U.S. at 456.

The MTC believes that the Ninth Circuit erred in its decision. For the reasons stated in this *amicus* brief, and for the reasons stated in California's Brief, the MTC respectfully requests that this Court take jurisdiction of this appeal to resolve the far-reaching preemption and Tenth Amendment issues involved.

ARGUMENT.

I.

The Decision of the Ninth Circuit Should Be Reversed Because the District Court Lacked Subject Matter Jurisdiction.

The MTC agrees with the Franchise Tax Board (hereinafter referred to as the FTB) that the federal district court lacked jurisdiction to decide this matter. Federal jurisdiction must be established solely by the complaint of the moving party. *Gully v. First National Bank*, 299 U.S. 109 (1936). In the case at bar, the FTB's causes of action, as filed in state court, were based solely on state law and sought recovery against only an in-state defendant. The complaint neither raised a federal question nor did diversity of citizenship exist. The only federal question posed was the trustee's defense, which does not represent a sufficient jurisdictional basis for removal to federal court.

Each state has a fundamental interest to have controversies arising under state law adjudicated in a state court. To permit otherwise not only undermines present jurisdictional standards, but also strikes at the heart of each state's judicial authority to decide matters affecting its own sovereignty.

II.

Congressional Enactment of ERISA Does Not Evidence Explicit or Implicit Intent to Preempt State Sovereignty to Tax as Traditionally Reserved to the States by the Tenth Amendment.

Assuming *arguendo* that the federal district court had jurisdiction, the Ninth Circuit Court of Appeals erroneously determined that the federal ERISA legislation preempted the power of the State of California to collect delinquent taxes from a vacation trust established under ERISA. See *Franchise Tax Board v. Construction Laborers Vacation*

Trust For Southern California, 679 F.2d 1307 (9th Cir. 1982).

In areas that are of vital concern to the states, such as revenue collection, courts have held that the "police powers of the States were not to be superceded by the Federal Act unless that was the clear and manifest purpose of Congress." *Operating Engineer's Local No. 428 v. Zamborsky*, 650 F.2d 196, 199 (9th Cir. 1981). The purpose of ERISA's preemption provisions was to eliminate the threat of conflicting or inconsistent state and local standards for, and regulation of, employee benefit plans. Under these provisions, ERISA preempted state law only if state law purported to *regulate*, directly or indirectly, *the terms and conditions* of ERISA employee benefit plans. 29 U.S.C. § 1144(c)(2).

Cal. Rev. & Tax. Code § 18817, the levying statute under present consideration, does not directly or indirectly *regulate* "the terms or conditions of employee benefit plans covered" by ERISA. 29 U.S.C. § 1144(c)(2). California law does not change the reporting and disclosure requirements, or standards of fiduciary responsibility, or any other standards that vacation trusts must meet to conform with ERISA. Section 18817 is a statute that generally applies to all delinquent state income taxpayers, thus securing for the state a lifeblood of revenue. This reasonable exercise of traditional state sovereignty should be preempted only upon a clear manifestation of Congressional intent. Congressional intent to preempt this legitimate exercise of state power is not evidenced by federal legislation governing vacation trust funds. Even Congressional intent to preempt states from collecting delinquent taxes from *pension* trust funds is also lacking. As further discussed below, ERISA permits the federal government to levy upon pension trust funds

to collect delinquent federal tax revenues. Treas. Reg. § 1.401(a)-13.

If ERISA Section 514 (29 U.S.C. § 1144) is totally pervasive, then all state laws which tangentially relate to ERISA have suffered a preemption demise. Many lower courts have determined that Congress did not intend that ERISA should preempt the rights of each state to control its vital and sovereign functions, particularly with regard to domestic relations and pension plans. See, *e.g.*, *Stone v. Stone*, 632 F.2d 740 (9th Cir. 1980); *Carpenters Pension Trust For Southern California v. Kronschnabel*, 632 F.2d 745 (9th Cir. 1980), *cert. denied*, 453 U.S. 922 (1981). The MTC believes that a state's power to tax and uniformly enforce the collection of its tax should be afforded the same judicial protection. A finding of complete preemption, not only in the area of taxation but in all areas touched by ERISA, divests each state the right to determine the application of its own laws to its own citizenry.[4]

When Congress has intended to prohibit application of state levying statutes, Congress has enacted explicit statutory language to this end. See, *e.g.*, Social Security Act (42 U.S.C. § 407); Railroad Retirement Act of 1974 (45 U.S.C. § 231M). Because ERISA fails to provide explicit preemptory language with regard to ERISA vacation trusts, no preemption intent should be manufactured by implication.

Accordingly, the MTC submits that if Congress had intended to displace every aspect of state law that is coincidentally related to the subject matter regulated by ERISA, then Congress would have enacted clear and unequivocal

---

[4]Even a state law which would hold benefits under ERISA subject to state taxation at the point of distribution of the benefits to a beneficiary would have a tangential relationship to ERISA.

language. Absent explicit Congressional intent, the MTC respectfully submits that this Court should grant jurisdiction and reverse the decision of the Ninth Circuit Court of Appeals.

III.

It Is Illogical to Imply That Congress Intended That ERISA Preempts a State Statute That Permits a State to Collect Delinquent State Personal Income Taxes From an ERISA Regulated Vacation Trust Fund When ERISA Permits the Federal Government to Collect Delinquent Federal Taxes From All the Regulated Pension Funds Covered by ERISA.

Laying all technicalities aside, the MTC believes that this Court should recognize the interaction between Federal law and California law in regard to the Tenth Amendment and preemption questions at issue. ERISA § 514 (29 U.S.C. § 1144) provides, subject to exceptions not relevant here, as follows: Subsection (a) states that ERISA provisions generally "supersede any and all State laws *insofar as they may now or hereafter relate to any* employee benefit plan" (emphasis added). Subsection (d) provides generally that nothing in ERISA "shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . or any rule or regulation issued under any such law."

As a package, subsection (a) as construed by the Ninth Circuit, prohibits a state tax levy on a vacation trust fund and subsection (d) permits the federal government, as provided in Treas. Reg. § 1.401(a)-13,[5] to collect delinquent

---

[5]This Treasury Regulation provides that any qualified plan shall not preclude either (1) "The enforcement of a Federal Tax levy made pursuant to section 6331" (providing for levy and seizure); and (2) "The collection by the United States on a judgment resulting from an unpaid tax assessment."

federal taxes by levying upon *any trust fund* established under ERISA, including the specific vacation trust funds at issue. In the MTC's judgment, if federalism and state sovereignty mean anything, this absurd result should not be tolerated by this Court under the Tenth Amendment even if this result was required by ERISA. No conceivable legitimate federal policy included in ERISA supports a result that invalidates California's power to collect delinquent taxes and at the same time permits the federal government to do so. In no event should the lower court's preemption holding be tolerated in the absence of specific unequivocal legislation by the Congress — which is clearly and admittedly absent in this case.

CONCLUSION.

State sovereignty to administer and collect taxes is an area traditionally reserved to the states under the Tenth Amendment. Absent explicit Congressional intent, ERISA should not be interpreted to preempt California's legitimate exercise of its power to collect delinquent state taxes. Because ERISA permits the federal government to collect delinquent federal taxes from ERISA regulated pension funds, ERISA should not be interpreted to preempt state governments from collecting delinquent state taxes from ERISA regulated vacation trust funds.

For these reasons, and the reasons stated in California's Brief, the MTC respectfully requests that this Court grant jurisdiction and reverse the decision of the Ninth Circuit.

Respectfully submitted,

WILLIAM D. DEXTER,
General Counsel,
MULTISTATE TAX COMMISSION,
Counsel for Amicus Curiae.

[THIS PAGE INTENTIONALLY LEFT BLANK]